

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

YVETTE BURKE, and,)
DANNY CRUMP,)
Plaintiffs,)
v.) Case No. 4:20-cv-00152
WAL-MART STORES EAST, INC.)
d/b/a WALMART SUPERCENTER #234,)
and)
WAL-MART STORES EAST I, LP)
f/k/a WAL-MART STORES, INC.)
d/b/a WALMART SUPERCENTER #234,)
and)
WALMART INC.)
d/b/a WALMART SUPERCENTER #234)
Defendants.)

DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE

Pursuant to the Court's March 5, 2020 Order to Show Cause, Defendant Wal-Mart Stores East, Inc. d/b/a Walmart Supercenter #234 ("Withdrawn Corp."), specially appearing for the purpose of disputing jurisdiction, and Defendants Wal-Mart Stores East I, LP f/k/a Wal-Mart Stores, Inc. d/b/a Walmart Supercenter #234 and Walmart Inc. d/b/a Walmart Supercenter #234 (hereinafter collectively referred to as "Walmart") submit the following information:

PLAINTIFF YVETTE BURKE'S CITIZENSHIP

1. Plaintiff Yvette Burke identifies her residence as Missouri in her Petition filed in the Circuit Court of Clay County, Missouri. (*See* Exhibit A to ECF #1 Notice of Removal, Petition ¶ 1).

2. A search of publicly available records, including property tax and assessment records for Clay County, Missouri, as well as Plaintiff Yvette Burke's Voluntary Petition for Bankruptcy filed on December 27, 2019 in the U.S. Bankruptcy Court for the Western District of Missouri shows that Plaintiff Yvette Burke is a citizen of the state of Missouri by her demonstration of her intent to make her home in Missouri indefinitely through her ownership of property in the state of Missouri and payment of property taxes to local and state governmental entities in Clay County, Missouri and the state of Missouri. (See Exhibit B attached hereto, Public Records re Yvette Burke and Danny Crump).

3. The publicly available Clay County, Missouri tax and assessment records show Plaintiff is and has been the property owner of the residence at 3821 N. Kensington Ave. in Kansas City, Missouri. (See Exhibit B attached hereto, Public Records re Yvette Burke and Danny Crump).

4. Likewise, the publicly available Notice of Mortgage Payment Change filed on February 25, 2020 as part of Plaintiff's December 27, 2019 Voluntary Petition for Bankruptcy, shows that Plaintiff is the property owner and resident of the property located at 3821 N. Kensington Ave. in Kansas City, Missouri. (See Exhibit B attached hereto, Public Records re Yvette Burke and Danny Crump).

5. "For purposes of diversity jurisdiction, the terms "domicile" and "citizenship" are synonymous." *Yeldell v. Tutt*, 913 F.2d 533, 537 (8th Cir. 1990). "To establish domicile, an individual must both be physically present in the state and have the intent to make his home there indefinitely." *Id.* Intent is weighed based on objective factors, including "declarations, exercise of civil and political rights, payment of taxes, obtaining of licenses, location of business or

occupation, and ownership of property.” *Id.* (citing *Bruton v. Shank*, 349 F.2d 630, 631, n.2 (8th Cir. 1965)).

6. Plaintiff Yvette Burke exercised her rights in Missouri by filing her lawsuit in Clay County and by filing her Bankruptcy Petition in the U.S. Bankruptcy Court for the Western District of Missouri. She pays taxes in Missouri and owns residential property in Missouri. Accordingly, she is domiciled in Missouri and a citizen of the state of Missouri for the purposes of diversity citizenship.

PLAINTIFF DANNY CRUMP’S CITIZENSHIP

7. The January 20, 2020 Petition asserts that Plaintiff Yvette Crump and Plaintiff Danny Crump “are now married and have been continually married” since Plaintiff Yvette Burke’s claimed injury on September 29, 2013. (*See* Exhibit B attached hereto, Public Records re Yvette Burke and Danny Crump).

8. The publicly available Verified Petition for Declaratory Judgment filed on November 26, 2019 against Plaintiff Yvette Burke and Plaintiff Danny Crump, among others, identifies Plaintiff Danny Crump as having an ownership interest in the residential property located at 3821 N. Kensington Ave. in Kansas City, Missouri. (*See* Exhibit B attached hereto, Public Records re Yvette Burke and Danny Crump).

9. Plaintiff Danny Crump untimely exercised his rights in Missouri by attempting to file a claim in the January 20, 2020 Petition. He owns residential property in the state of Missouri and has been married continually to Plaintiff Yvette Burke and residing with her indefinitely in the state of Missouri. Accordingly, he is domiciled in Missouri and a citizen of the state of Missouri for the purposes of diversity citizenship.

DEFENDANT WAL-MART STORES EAST, INC.'S CITIZENSHIP

10. Defendant Wal-Mart Stores East, Inc. provides the following regarding complete diversity of citizenship:

- a) Wal-Mart Stores East, Inc., now known as Wal-Mart Stores East, LLC, is a limited liability company organized and existing under the laws of the State of Arkansas and maintains its principal office and place of business in the State of Arkansas, not having its chief and principal place of business in the State of Missouri, and is neither a citizen nor a resident of the State of Missouri.
- b) The sole member of Wal-Mart Store East, LLC is Wal-Mart Stores, Inc., a foreign corporation organized and existing under the laws of the State of Delaware and maintains its principal office and place of business in the State of Arkansas, not having its chief and principal place of business in the State of Missouri, and is neither a citizen nor a resident of the State of Missouri.

11. Wal-Mart Stores East I, LP, for purposes of establishing that complete diversity of citizenship exists for this controversy, provides the following information:

- a) Wal-Mart Stores East, LP d/b/a Wal-Mart Stores East I, LP was, at the time of the commencement of this matter, and ever since, has been, and still is, a foreign limited partnership organized and existing under the laws of the State of Delaware, and maintains its principal office and place of business in the State of Arkansas, not having its chief and principal place of business in the State of Missouri, and is neither a citizen nor a resident of the State of Missouri.
 - i. WSE Management, LLC, general partner, and WSE Investment, LLC, limited partner, are the sole partners comprising Wal-Mart Stores East, LP.

1. WSE Management, LLC, at the time of the commencement of said action and ever since, has been, and still is, a foreign limited liability company organized and existing under the laws of the State of Delaware, with its chief and principal office and place of business in the State of Arkansas, and is neither a citizen nor a resident of the State of Missouri.
2. WSE Investment, LLC, at the time of the commencement of said action and ever since, has been, and still is, a foreign limited liability company organized and existing under the laws of the State of Delaware, with its chief and principal office and place of business in the State of Arkansas, and is neither a citizen nor a resident of the State of Missouri.

ii. The sole member of both WSE Management, LLC and WSE Investment, LLC, at the time of the commencement of said action and ever since, has been, and still is, Wal-Mart Stores East, LLC.

1. The sole member of Wal-Mart Store East, LLC is Wal-Mart Stores, Inc., a foreign corporation organized and existing under the laws of the State of Delaware and maintains its principal office and place of business in the State of Arkansas, not having its chief and principal place of business in the State of Missouri, and is neither a citizen nor a resident of the State of Missouri.

CONCLUSION

WHEREFORE, Defendant Wal-Mart Stores East, Inc. d/b/a Walmart Supercenter #234, specially appearing for the purpose of disputing jurisdiction, and Defendants Wal-Mart Stores East I, LP f/k/a Wal-Mart Stores, Inc. d/b/a Walmart Supercenter #234 and Walmart Inc. d/b/a Walmart Supercenter #234 hereby present the above information establishing that complete diversity of citizenship exists between the parties as Plaintiffs are both citizens of the State of Missouri, whereas all entities with an ownership interest in any of the Defendants are citizens of the State of Delaware or the State of Missouri with none of those entities having their chief and principal place of business in the State of Missouri and none of those entities a resident or citizen of the State of Missouri.

DATED: March 6, 2020.

Respectfully submitted:

/s/ M. Jared Marsh

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of March 2020, the foregoing was electronically mailed to:

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